

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENHANCING THE SOUTH CAROLINA EMERGENCY HEALTH POWERS ACT TO PROVIDE FOR CERTAIN LIABILITY PROTECTIONS TO HEALTH CARE FACILITIES, HEALTH CARE PROVIDERS AND OTHER ENTITIES PROVIDING ESSENTIAL GOODS AND SERVICES DURING THE CORONAVIRUS PUBLIC HEALTH EMERGENCY; TO AMEND SECTION 44-4-120, RELATING TO THE PURPOSES OF THE PUBLIC HEALTH EMERGENCY ACT, BY PROVIDING THE ADDITIONAL PURPOSE OF PROTECTING HEALTH CARE FACILITIES, HEALTH CARE PROVIDERS AND OTHER ENTITIES FROM LIABILITY WHILE THEY PROVIDED ESSENTIAL SERVICES DURING THE CORONAVIRUS PUBLIC HEALTH EMERGENCY; TO AMEND SECTION 44-4-130, RELATING TO DEFINITIONS BY ADDING DEFINITIONS FOR COVERED ENTITY, COVERED INDIVIDUAL, CORONAVIRUS, HEALTH EMERGENCY CLAIM, PUBLIC HEALTH GUIDANCE, DAMAGES, AND SERIOUS PHYSICAL INJURY AND BROADENING EXISTING DEFINITIONS OF HEALTH CARE FACILITY AND HEALTH CARE PROVIDER, TO AMEND SECTION 44-4-570, RELATING TO IMMUNITY SO AS TO PROVIDE ADDITIONAL LIABILITY PROTECTIONS TO COVERED ENTITIES, COVERED INDIVIDUALS, HEALTH CARE FACILITIES AND HEALTH CARE PROVIDERS OPERATING DURING THE CORONAVIRUS PUBLIC HEALTH EMERGENCY; TO AMEND ARTICLE 5, CHAPTER 4, OF TITLE 44, RELATING TO THE EMERGENCY HEALTH POWERS ACT BY ADDING A NEW SECTION TO PRESERVE CERTAIN DEFENSES IN LAWSUITS RELATED TO THE CORONAVIRUS PUBLIC HEALTH EMERGENCY AND TO PROVIDE CERTAIN STANDARDS OF CARE AND PROCEDURES FOR LAWSUITS RELATING TO THE CORONAVIRUS PUBLIC HEALTH EMERGENCY BROUGHT PRIOR TO THIS BILL'S ENACTMENT, AND TO PROVIDE THIS ACT'S PROVISIONS SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF LIABILITY LIMITATION, AND TO PROVIDE FOR A SUNSET PROVISION FOR THESE LIABILITY LIMITATIONS ON DECEMBER 31, 2021 OR ONE YEAR AFTER THE PUBLIC HEALTH EMERGENCY WHICHEVER IS LATER; TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE SEVERABLE; TO PROVIDE THAT ANY CLAIMS BY OR ON BEHALF OF AN EMPLOYEE AGAINST AN EMPLOYER FOR EXPOSURE TO CORONAVIRUS SHALL BE HANDLED BY THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; TO PROVIDE THAT IN THE CASE OF A CONFLICT OF LAW BETWEEN THIS ACT ANY OTHER LAW OF THIS STATE, THE PROVISIONS OF THIS ACT SHALL PREVAIL, AND TO PROVIDE FOR THE EFFECTIVE DATE OF THE ACT TO BE UPON APPROVAL OF THE GOVERNOR AND FOR ITS PROVISIONS TO BE RETROACTIVE FOR TO MARCH 13, 2020, THE DATE UPON WHICH THE GOVERNOR DECLARED A PUBLIC HEALTH EMERGENCY RELATING TO CORONAVIRUS.

Be it enacted by the General Assembly of the State of South Carolina:

/ SECTION 1. Section 44-4-120 of the 1976 Code is amended to read:

"Section 44-4-120. The purposes of this act are:

(1) to authorize the collection of data and records, the control of property, the management of persons, and access to communications as may be strictly necessary to accomplish the purposes of this act;

(2) to facilitate the early detection of a qualifying health event or public health emergency, and allow for immediate investigation of such an emergency by granting access to individuals' health information under specified circumstances;

(3) to grant state officials the authority to use and appropriate property as necessary for the care, treatment, and housing of patients, and for the destruction or decontamination of contaminated materials;

(4) to grant state officials the authority to provide care and treatment to persons who are ill or who have been exposed to infection, and to separate affected individuals from the population at large for the purpose of interrupting the transmission of infectious disease;

(5) to ensure that the needs of infected or exposed persons will be addressed to the fullest extent possible, given the primary goal of controlling serious health threats;

(6) to provide state officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties; and

(7) to provide health care facilities, health care providers, covered entities, and covered individuals certain civil liability limitations for their continued operation during the Coronavirus public health emergency or for swift reopening after forced or voluntary closure during the Coronavirus public health emergency so they can provide essential goods services to the citizens of South Carolina;

(8) to require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency.”

SECTION 2. Section 44-4-130 of the 1976 Code is amended to read:

“Section 44-4-130. As used in the chapter:

(A) "Biological agent" means a microorganism, virus, infectious substance, naturally occurring or bioengineered product, or other biological material that could cause death, disease, or other harm to a human, an animal, a plant, or another living organism.

(B) "Bioterrorism" means the intentional use or threatened use of a biological agent to harm or endanger members of the public.

(C) "Chemical agent" means a poisonous chemical agent that has the capacity to cause death, disease, or other harm to a human, an animal, a plant, or another living organism.

(D) "Chemical terrorism" means the intentional use or threatened use of a chemical agent to harm or endanger members of the public.

(E) "Chain of custody" means the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.

(F) "Commissioner" means the Commissioner of the Department of Health and Environmental Control.

(G) "Contagious disease" is an infectious disease that can be transmitted from person to person, animal to person, or insect to person.

(H) "Coronavirus" means the virus generally known as "severe acute respiratory syndrome coronavirus 2," any mutation thereof, and any disease or condition caused by "severe acute respiratory syndrome coronavirus 2 and it is commonly abbreviated "COVID-19."

~~(H)~~(I) "Coroners, medical examiners, and funeral directors" have the same meanings as provided in Sections 17 5 5 and 40 19 10, respectively.

(J) "Covered Entity" means:

(1) a business entity, including a person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation, whether for profit or not for profit, self-employed individuals, partnerships, limited partnerships, limited liability companies, limited

liability partnerships, business entities filing articles of incorporation, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts, other organizations, or their assigns;

(2) any South Carolina government agency, division, authority, board, commission, instrumentality, political subdivision, municipality, county, or other governmental entity; or

(3) any insurer or indemnitor of any Covered Entity, Covered Individual, Health care facility or health care provider.

(K) "Covered Individual" means any director, officer, employee, agent, contractor, third-party worker, or other representative of a Covered Entity, Health care facility or Health care provider with respect to any act or omission performed while acting on behalf of the Covered Entity, Health care facility or Health care provider.

(L) Damages means economic damages, non-economic damages for mental anguish and emotional distress, compensatory damages, consequential damages, punitive damages, and any other damages arising from any injury, death, or property damage or otherwise.

(M) "DHEC" means the Department of Health and Environmental Control or any person authorized to act on behalf of the Department of Health and Environmental Control.

~~(J)~~(N) "Facility" means any real property, building, structure, or other improvement to real property or any motor vehicle, rolling stock, aircraft, watercraft, or other means of transportation.

~~(K)~~(O) "Health care facility" means any nonfederal institution, building, or agency or portion thereof, whether public or private (for profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. This includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long term care facilities, medical assistance facilities, mental health centers, outpatient facilities, physician offices or

clinics, public health centers, rehabilitation facilities, residential treatment facilities, skilled nursing facilities, and adult daycare centers. The term also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories, research facilities, pharmacies, laundry facilities, health personnel training and lodging facilities, and patient, guest, and health personnel food service facilities, and offices and office buildings for persons engaged in health care professions or services.

~~(L)~~(P) "Health care provider" means any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, pharmacy technicians, dentists, physician assistants, nurse practitioners, registered and other nurses, respiratory therapists, paramedics, firefighters who provide emergency medical care, emergency medical or laboratory technicians, and ambulance and emergency medical workers and any student in, or recent graduate of, any school or program designed for the study of any of the above listed health care professions or occupations. This includes out of state medical laboratories, provided that such laboratories have agreed to the reporting requirements of South Carolina. Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out of state laboratory is also responsible for reporting results.

(Q) "Health Emergency Claim" means any claim that arises from, relates to, or is connected with, directly or indirectly, a public health emergency pertaining to the Coronavirus. All such claims, no matter how denominated, shall be considered for purposes of this Chapter a Health Emergency Claim. A Health Emergency Claim shall include, but not be limited to, any cause of action, that is related in any matter to either or both of:

(1) the actual, alleged, or feared exposure to or contraction of Coronavirus from the premises of a Covered Entity or Health care facility or otherwise related to or arising from its operations, products, or services provided on or off-premises; or

(2) the Covered Entity's or Health care facilities efforts to prevent or delay the spread of Coronavirus, including but not limited to: testing, monitoring, collecting, reporting, tracking, investigating, or disclosing exposures or other information, or making or providing precautionary equipment or supplies such as personal protective equipment; or

(3) any act or omission relating to, involving, or resulting from medical care or treatment or arranging or withholding further medical care or treatment pertaining to Coronavirus; or

(4) any injury or death alleged to have been caused due to a cancellation, delay, or denial of care resulting from Public Health Guidance.

~~(M)~~(R) "Infectious disease" is a disease caused by a living organism or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

~~(N)~~(S) "Isolation" and "quarantine" mean the compulsory physical separation (including the restriction of movement or confinement) of individuals and/or groups believed to have been exposed to or known to have been infected with a contagious disease from individuals who are believed not to have been exposed or infected, in order to prevent or limit the transmission of the disease to others; if the context so requires, "quarantine" means compulsory physical separation, including restriction of movement, of populations or groups of healthy people who have been potentially exposed to a contagious disease, or to efforts to segregate these persons within specified geographic areas. "Isolation" means the separation and confinement of individuals known or suspected (via signs, symptoms, or laboratory criteria) to be infected with a contagious disease to prevent them from transmitting disease to others.

~~(O)~~(T) "Protected health information" means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is,

or reasonably should be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

~~(P)~~(U) "Public health emergency" means the occurrence or imminent risk of a qualifying health condition.

(V) "Public Health Guidance" means any applicable guidance, directive, order, or rule provided by the United States Center for Disease Control and Prevention, the United States Occupational Safety and Health Administration, South Carolina Occupational Safety and Health Administration, United States Department of Health and Human Services, United States Food and Drug Administration, South Carolina Department of Health and Environmental Control, or other federal or state governmental entity that is applicable to the type of Covered Entity, Covered Individual, Health care facility or Health care provider and to the Health Emergency Claim at issue or any other guidance, directive, policy, procedure, or order relied upon by a Covered Entity, Covered Individual, Health care facility or Health care provider in an attempt to comply with the Public Health Guidance.

~~(Q)~~(W) "Public safety authority" means the Department of Public Safety, the State Law Enforcement Division, or designated persons authorized to act on behalf of the Department of Public Safety, the State Law Enforcement Division including, but not limited to, local governmental agencies that act principally to protect or preserve the public safety, or full time commissioned law enforcement persons.

~~(R)~~(X) "Qualifying health condition" means:

(1) a natural disaster; or

(2) an illness or health condition that may be caused by terrorism, epidemic or pandemic disease, or a novel infectious agent or biological or chemical agent and that poses a substantial risk of a significant number of human fatalities, widespread illness, or serious economic impact to the agricultural sector, including food supply.

~~(S)~~(Y) "Radioactive material" means a radioactive substance that has the capacity to cause bodily injury or death to a human, an animal, a plant, or another living organism.

~~(F)~~(Z) "Radiological terrorism" means the intentional use or threatened use of a radioactive material to harm or endanger members of the public.

(AA) "Serious Physical Injury" means a death or an injury that requires either in-patient hospitalization of at least seventy-two (72) hours, permanent impairment of a bodily function, or permanent damage to a body structure.

~~(U)~~(BB) "Specimens" include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests, and environmental samples or other samples needed to diagnose potential chemical, biological, or radiological contamination.

~~(A)~~(CC) "Tests" include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety, and welfare.

~~(W)~~(DD) "Trial court" is the circuit court for the county in which the isolation or quarantine is to occur or to the circuit court for the county in which a public health emergency has been declared. If that court is unable to function because of the isolation, quarantine, or public health emergency, the trial court is a circuit court designated by the Chief Justice upon petition and proper showing by the Department of Health and Environmental Control."

SECTION 3. Section 44-4-570 of the 1976 Code is amended by adding:

"(E)(1) Notwithstanding any other provision of law, a Covered Entity, Covered Individual, Health care facility, or Health care provider shall not be liable for any Damages suffered by any person or entity as a result of or in connection with a Health Emergency Claim that results, directly or indirectly, from any act or omission of the Covered Entity, Covered Individual, Health care facility, or Health care provider.



(2) This protection shall not apply if the claimant proves by clear and convincing evidence that the Covered Entity, Covered Individual, Health care facility, or Health care provider caused the injury or damage (i) through knowingly reckless, willful, or intentional misconduct, and (ii) by failing to reasonably attempt to comply with Public Health Guidance or any other governmental or health care facility order, directive, guidance, policy, or procedure pertaining to the Coronavirus.

(3) Notwithstanding any other provision of law, in those instances where liability is established as required by subsection (2) and the acts or omissions do not result in Serious Physical Injury, a Covered Entity's, Covered Individual's, Health care facility's, or Health care provider's liability shall be limited to actual economic compensatory damages, and in no event shall the Covered Entity or Covered Individual be liable for noneconomic or punitive damages.

(4) In alleging a Health Emergency Claim, a party must state with particularity the circumstances constituting such claim."

SECTION 4. Article 5, Chapter 4, Title 44 of the 1976 is amended by adding:

"Section 44-5-575. (A) Nothing in this act shall be construed to preempt, remove, displace, repeal, or limit in any way any defense or right that exists under law that would be applicable to any Covered Entity, Covered Individual, Health care facility, or Health care provider sued after the effective date of this act. This section confirms that the immunity provided by this act is in addition to and cumulative of other defenses and rights that exist under law.

(B) For any cause of action relating to an actual, alleged, or feared exposure to or contraction of Coronavirus where such cause of action accrues before this act becomes law, the following shall apply to such cause of action:

(1) The duty of care for such previously accrued causes of action should be reasonable and feasible attempts to comply with the then-applicable Public Health Guidance. Accordingly, notwithstanding any other provision of law and as a matter of law, a Covered Entity, Covered Individual, Health care facility or

Health care provider shall not be liable for negligence, wantonness, premises liability, or for any non-willful or non-intentional civil cause of action to which this section applies, unless the claimant shows by clear and convincing evidence that (1) the Covered Entity, Covered Individual, Health care facility, or Health care provider did not reasonably attempt to comply with the then-applicable and feasible Public Health Guidance or (2) reasonably attempt to comply with amended or revised then-applicable and feasible Public Health Guidance within a reasonable time after such revision or amendment is published and the business continues to operate during such time.

(2) In alleging any cause of action to which this section applies, a party must state with particularity the circumstances constituting such cause of action.

(3) Notwithstanding any other provision of law, for a cause to which this section applies, a Covered Entity, Covered Individual, Health Care facility, or Health care provider shall not be liable for Damages from mental anguish or emotional distress or for punitive damages, but could be liable for compensatory damages. This subsection shall not prohibit the awarding of punitive damages for wrongful death claims, but no other Damages shall be allowed for such claims.

(C) Notwithstanding any other provision of law, this act shall be liberally construed to provide immunity protections for Covered Entities, Covered Individuals, Health care facilities, and Health care providers. Failure by a Covered Entity, Covered Individual, Health care facility, or Health care provider shall not constitute negligence per se, nor shall such failure create an inference that the Covered Entity, Covered Individual, Health care facility, or Health care provider acted in a knowingly reckless, willful, intentional, or wanton manner. A Covered Entity, Covered Individual, Health care facility, or Health care provider shall not be subject to any negative inference or presumption, or heightened burden, in the defense of any claim under this act.

(D) A Health Emergency Claim must be filed not later than one year after the date of the alleged or actual exposure. The immunity and other provisions provided in this act shall terminate on December 31,

2021, or one year after a declared health emergency relating to Coronavirus expires, whichever is later, except that any civil liability arising out of acts or omissions related to a Health Emergency Claim where the act or omission occurred during the operation of this act shall be subject to the provisions of this act in perpetuity.

SECTION 5. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. Any claims by or on behalf of an Employee against their Employer, as those terms are defined by S.C. Code Sections 42-1-130 through 42-1-150, for exposure to Coronavirus arising out of and in the course of employment, are subject to the exclusivity provisions of the South Carolina Workers' Compensation Commission as established by S.C. Code Section 42-1-540. This section does not otherwise modify the terms or application of, and shall not supersede, Title 42 of the South Carolina Code.

SECTION 7. To the extent any provision of this Act conflicts with any other law of this State, then the provisions of this Act shall prevail.

SECTION 8. This act takes effect upon approval of the Governor and its provisions shall be retroactive and effective for lawsuits filed on or after March 13, 2020. /